



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL**

September 25, 1969

Honorable O. N. Humphreys, Jr.
Administrator
Texas Liquor Control Board
Sam Houston State Office Building
Capitol Station
Austin, Texas 78711

Opinion No. M-479

RE: Whether changes of the individual responsible for management of the premises under a Retail Dealer's On-Premise License or wine and beer Retailer's permit must be reflected upon the face of the license or permit prior to renewal date, and related question?

Dear Mr. Humphreys:

You request the opinion of this office as to whether a change in the individual natural person designated to be primarily responsible for the management of the premises under a Retail Dealer's On-Premise License or Wine and Beer Retailer's Permit must be reflected upon the face of the license or permit prior to its renewal date.

In the event such a change is required prior to renewal, you also ask whether the license or permit should be amended, corrected, or supplemented, or whether an original application must be filed.

The Texas Liquor Control Act, Article 667-5, Vernon's Ann. P.C. (as added by Chapter 38, page 99, Section 17A, Acts of the 61st Legislature, Regular Session, 1969) requires the following:

"Section 5C. Every Retail Dealer's On-Premise License and Wine and Beer Retailer's Permit shall contain the name of the individual natural person holding

such license or permit; or, if the holder not be an individual natural person, such license or permit shall designate the name of the individual partner, officer, trustee or receiver who is primarily responsible for the management of the premises. Every such license and permit shall contain a photograph of the individual natural person holding such license or permit; or, if the holder not be an individual natural person, the designated natural person named therein. Such photograph shall be not more than two years old and shall be furnished by the licensee or permittee. The Board is hereby vested with the power to prescribe the size and nature of such photograph, the manner of furnishing same, and the method of affixing such photograph to the license or permit." (Emphasis added).

It is the opinion of this office that the language used in Section 5C specifying that every license or permit contain the name and photograph of "the individual partner, officer, trustee or receiver who is primarily responsible for the management of the premises" imposes a continuing requirement. Therefore, any change in the designated individual natural person must be reflected on the face of the license or permit.

In answer to your second question, the Texas Liquor Control Board's authority to make such a change is provided by Article 666-15d, Vernon's Penal Code, Texas Liquor Control Act, the relevant parts of which provide that ". . . in case it is necessary to make any change in any . . . permit the Board is authorized to issue a . . . corrected permit."

The Act does not require an original application or renewal whenever a different partner, officer, trustee, or receiver is designated as the person primarily responsible for the management of the premises. Unlike the holder of a permit or license who is an individual natural person, a change by the entity of the person so designated does not involve a change of the license or permit holder. Section 5D and 5E apply only to "original" applications. Therefore the fingerprinting and investigation provisions of Section 5D and the hearing provisions of Section 5E are not applicable to an individual natural person designated by an entity as primarily responsible for the management of the premises in the existing license or permit subsequent to its original application.

However the Texas Liquor Control Board may refuse to renew the annual license or permit if such designated individual natural person has been finally convicted of certain offenses during the three years next preceding the filing of such renewal.

Section 5F, (b) and (c), provides that:

"(b) The Texas Liquor Control Board shall refuse to issue any renewal of a Retail Dealer's On-Premise License or a Wine and Beer Retailer's Permit if it finds that the individual applicant, or the spouse of such applicant, has at any time during the three years next preceding the filing of application for such renewal been finally convicted of a felony, or any of the offenses listed in Subsection (a) of this Section, or if it finds that three years has not elapsed since the termination of any sentence, parole or probation served by the applicant, or the spouse of such applicant, as the result of a felony prosecution, or prosecution for any type of offense named in Subsection (a) of this Section.

"(c) The word 'applicant' as used in this Section shall mean the individual natural person, if any, holding or applying for such license or permit; or, if the holder or applicant not be an individual natural person, the individual partner, officer, trustee or receiver who is primarily responsible for the management of the premises."

The offenses listed in Subsection (a) are the following:

- "(1) prostitution;
- "(2) vagrancy convictions involving moral turpitude;
- "(3) bookmaking;
- "(4) gambling (gaming);
- "(5) any offense involving narcotics or other dangerous drugs;
- "(6) violations of the Texas Liquor Control Act resulting in the cancellation of a license or permit, or a fine of not less than Five Hundred Dollars (\$500);
- "(7) more than three violations of the Texas Liquor Control Act relating to minors;
- "(8) bootlegging;

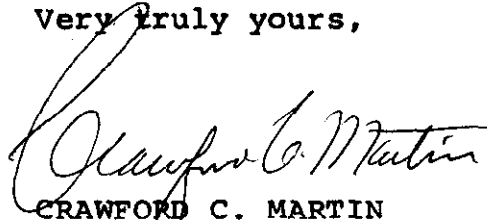
- "(9) violation of penal law involving firearms or other deadly weapons or if he finds that three years has not elapsed since the termination of any sentence, parole or probation served by the applicant, or the spouse of such applicant, as the result of a felony prosecution, or prosecution for any type of offense named herein."

SUMMARY

When a change is made of the individual natural person designated to be primarily responsible for the management of the premises of a Retail Dealer's On-Premise License or Wine and Beer Retailer's Permit prior to its renewal date, such change must be reflected on the License or Permit by showing on its face the individual's name and photograph.

Such a change by the existing license or permit holder must be effected by a corrected license or permit.

Very truly yours,



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